IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

Satyendra Deo Gaur Vs. State of Rajasthan & Anr.

S.B.CR.MISC. PETITION NO.1174/2005

DATE OF ORDER :: November 03, 2006

PRESENT

HON'BLE MR.JUSTICE H.R.PANWAR

Mr. K.K.Maharshi, for the petitioner.
Mr. Ashok Upadhyaya, Public Prosecutor.
Mr. Sandeep Mehta, for non-petitioner No.2.

BY THE COURT:

By the instant criminal misc. petition under section 482 Cr.P.C., the petitioner has challenged the order dt. 26.2.2005 passed by the Chief Judicial Magistrate, Sirohi (for short 'the trial court' hereinafter), whereby the trial court took the cognizance of the offences under sections 323 and 504 I.P.C. and issued the process against the present petitioner. Thereafter, the petitioner appeared before the trial court. By another order dt. 24.8.2005, the substances of charge were read over to the petitioner and the trial proceeded.

I have heard learned counsel for the parties. Perused the order impugned.

It is contended by the learned counsel for the petitioner that in the instant case, the occurrence took place on 21.10.2001 and the trial court took the cognizance vide order dt. 26.2.2005, therefore, it is time barred. It is further contended that the petitioner stood a witness against one Virendra Modi in some other case and the case in hand is outcome of that complaint. Learned counsel for the petitioner has relied on certain documents, which are not part of the record of the trial court.

So far period of limitation for taking cognizance is concerned, in the instant case, the occurrence took place on 21.10.2001 and the crime report was lodged on 22.10.2001. The matter remained for investigation with the police and ultimately on 30.11.2001 almost more than a year, the police filed the negative final report. Thereafter, the complainant filed a protest petition, which remained pending and ultimately by order dt. 26.2.2005, the trial court took the cognizance and issued the process. The controversy regarding limitation stands concluded by the Hon'ble Supreme Court in Bharat Damodar Kale vs. State of Andhra Pradesh, **(2003) 8 SCC 559,** wherein

the Hon'ble Supreme Court has held as under:

> "A cumulative reading of various provisions of Chapter XXXVI Cr.P.C. clearly indicates that the limitation prescribed therein is only for the filing of the complaint or initiation of the prosecution and not for taking cognizance. It of course prohibits the court from taking cognizance of an offence where the complaint is filed before the court after the expiry of the period mentioned in the said Chapter. This is clear from Section 469 of the Code found in the said Chapter which specifically says that the period of limitation in relation to an offence shall commence either from the date of the offence or from the date when the offence is detected. Section 470 indicates that while computing the period of limitation, time taken during which the case was being diligently prosecuted in another court or in appeal or in revision against the offender should be excluded. The said section also provides in the Explanation that in computing the time required for obtaining the consent or sanction of the Government or any other authority should be excluded. Similarly, the period during which the court was closed will also have to be excluded. All these provisions indicate that the court taking cognizance can take cognizance of an offence the complaint of which is filed before it within the period of limitation prescribed and if need be after excluding such time which is legally excludable. This clearly indicates that the limitation prescribed is not for taking cognizance within the period of limitation, but for taking cognizance of an offence in regard to which a complaint is filed or prosecution is

> initiated beyond the period of limitation prescribed under the Code.
>
> Apart from the statutory indication, the said view also gets support from the fact that taking of cognizance is an act of the court over which the prosecuting agency or the complainant has no control. Therefore, a complaint filed within the period of limitation under the Code cannot be made infructuous by an act of the court. The legal phrase "actus curiae neminem gravabit" which means an act of the court shall prejudice no man, or by a delay on the part of the court neither party should suffer, also supports the view that the legislature could not have intended to put a period of limitation on the act of the court of taking cognizance of an offence so as to defeat the case of the complainant."

In this view of the matter, the contention raised by the learned counsel for the petitioner regarding limitation in taking cognizance cannot be accepted and deserves to be rejected.

So far reliance on certain documents, which are not part of the record of the trial court is concerned, the Hon'ble Supreme Court in State of Orissa Vs. Debendra Nath Padhi, **JT 2004 (10) SC 303**, held that at the time of framing the charge or taking cognizance, the accused has no right to produce any material. The Apex Court observed that the only right the accused has at that stage is of being heard and nothing beyond

it. The Apex Court further held as under:

> "At the stage of framing the charge roving and fishing inquiry is impermissible. It is well-settled that at the stage of framing of charge, the defence of the accused cannot be put forth. It only means hearing the submissions of the accused on the record of the case as filed by the prosecution and nothing more. The expression 'hearing the submissions of the accused' cannot mean opportunity to file material to be granted to the accused and thereby changing the settled law. At the stage of framing of charge, hearing the submissions of the accused has to be confined to the material produced by the police."

Thus, in my view, no case for interference in inherent jurisdiction is made out. The petition is, therefore, dismissed. The application being S.B.Cr.Misc. Application No.569/2006 also stands dismissed.

[H.R.PANWAR],J.

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